



THE INTERIM

October 2011

A monthly newsletter of the Montana Legislative Branch

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Kolman Hired as Legislative Environmental Analyst

On Sept. 14, the Environmental Quality Council unanimously endorsed a subcommittee recommendation to hire Joe Kolman as the new Legislative Environmental Analyst. The Legislative Council concurred in the selection, making the appointment official.

Kolman joined the Legislative Environmental Policy Office as a research analyst in 2004. He holds a degree in journalism and has training and experience in interpersonal communications and geographic information systems. Since 2005, Kolman has staffed several legislative standing committees including House Local Government, House Natural Resources, Senate Fish & Game, Senate Natural Resources, and Senate Energy. He is staff to the Environmental Quality Council and the Water Policy Committee during the interim.



Kolman succeeds Todd Everts who was appointed as legal services director and chief legal counsel for the Legislature. The vacant LEPO research analyst position is expected to be filled this fall. The Legislative Services Division is very fortunate to have topnotch individuals that it can promote from within. The promotions enhance LSD's efforts to provide quality support to the legislative branch.

Audit Division Welcomes New Legal Counsel

The Legislative Audit Division recently hired Deborah F. Butler as legal counsel. Butler comes to LAD from the Prosecution Services Bureau of the Attorney General's Office. Her primary responsibility there was prosecution of workers compensation fraud. Butler has also worked as assistant attorney general and legal section chief at the Montana Law Enforcement Academy; deputy attorney for Jefferson County; and an associate with the Great Falls firm Graybill, Ostrem & Warner.



Butler was raised in Missoula. She graduated from the University of Montana in 1985 with a degree in economics. She earned a law degree from the Thomas M. Cooley Law School in Lansing, Mich., and a master's degree in law in trial advocacy from

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch website at leg.mt.gov.

Temple University's Beasley School of Law in Philadelphia. In 1990, she was admitted to practice law in Montana.

Butler lives in Jefferson City with her four dogs. She succeeds Monica Huyg as LAD legal counsel.

Children & Families Committee Met in September

The Children, Families, Health, and Human Services Interim Committee was meeting on Sept. 19 as this issue of *The Interim* went to press. A full report on the committee's activities will appear in the November issue.

Meanwhile, check the committee's website at www.leg.mt.gov/cfhhs for updates on actions taken at the September meeting.

Economic Affairs Committee Schedules Agency Monitoring, Licensing Board Review

The Economic Affairs Interim Committee will hear from representatives of the Department of Labor and Industry, the Department of Commerce, and four professional and occupational licensing boards at its Oct. 5-6 meeting. The committee has decided to devote substantial time this interim to monitoring state agencies and to reviewing licensing boards as required by House Bill 525.

In August, the committee adopted an interim work plan. The committee plans to spend about a third of its time on agency monitoring, including the HB 142 review of advisory councils and required reports. About half of its time will be spent on the review of licensing boards. Less time will be spent on the House Joint Resolution 33 study of a health insurance exchange, which the committee learned is nearly certain to be a federal exchange. The committee's remaining time will be spent on other statutory duties, hearing a report from stakeholders involved in the Senate Joint Resolution 15 study of agricultural bonding, and discussing member issues.

Responding to committee questions about what the federal government needed from Montana if the state wanted to have a state-operated health insurance exchange, the regional director of the Department of Health and Human Services, Marguerite Salazar, and other federal officials said that the Legislature would have to act to show the intent for a state exchange before January 1, 2013; otherwise a federal exchange will be put in place. But they noted that there was an opportunity for a federal-state partnership on the exchange, as well as a way for the state to take over a federally run exchange if the state met relevant criteria. The partnership and the proposal for a state to take over a federal exchange were both part of proposed federal regulations. The committee discussion is available online at roughly one hour into the

meeting by clicking on the Listen/Watch link on the committee website for Aug. 23.

Linda Snedigar from the state's Medicaid eligibility office in the Department of Public Health and Human Services reviewed changes in Medicaid eligibility that are expected under the Patient Protection and Affordable Care Act.

Kevin Howlett, tribal health director for the Confederated Salish and Kootenai Tribes, discussed how a combination of the health insurance exchange and Medicaid expansion could help more Indians get medical services. He said that the Indian Health Service, which funds or provides health care on Indian reservations, often runs out of money for all but the most serious cases about two-thirds or three-quarters of the way through a fiscal year. If more Indians had health insurance, either through an exchange or elsewhere, the Indian Health Service or health clinics like those operated on the Flathead Reservation could bill the insurance company and provide more continuous care.

Other presentations at the Aug. 23-24 meeting included:

- a discussion by Christian Mackay, executive officer for the Board of Livestock, about the expanded designated surveillance area for brucellosis, which now includes more of Beaverhead County;
- reviews of the Boards of Pharmacy, Chiropractors, and Veterinary Medicine, all of which the committee voted to recommend retaining as is. The committee voted to have the representatives of the dentists, denturists, and dental hygienists come back before the committee after discussing a proposal to separate the Board of Dentistry into two boards: one representing dentists and the other representing dental hygienists and denturists. The second review is set for January.
- a presentation by Ron de Yong, director of the Department of Agriculture, regarding the department's activities, various councils attached to the department, and the SJR 15 study of agricultural commodity bonding;
- a presentation by grain producers, elevator operators and traders, and other agricultural interests regarding SJR 15. The committee asked that the stakeholders work on ways to address the concerns about insuring payments for commodity sales, including deferred compensation sales, and return with suggestions at the committee's April 2012 meeting.
- a review of eminent domain actions and court cases.

The committee will meet at 9 a.m., Oct. 5 and at 8:30 a.m. Oct. 6 in Room 137 of the Capitol. Agenda items include:

- reports from the Department of Labor and Industry's Workforce Services Division and Unemployment Insurance Division;
- a report from the Board of Investments;
- HB 525 reviews of the Boards of Hearing Aid Dispensers, Nursing Home Administrators, Funeral Service, and Medical Examiners;
- HB 142 review of the Tourism Advisory Council, the Economic Development Advisory Council, and the Montana Agriculture Development Council;
- an update on the implementation of HB 334 and other changes to workers' compensation.

The agenda for the Oct. 5-6 meeting is on committee website. To listen to that meeting as it occurs or to the Aug. 23-24 meeting, click on the Listen/Watch link at leg.mt.gov/eaic. For more information, contact committee staff Pat Murdo at pmurdo@mt.gov or 406-444-3594.

Energy Panel Looks to Improve "Call Before You Dig" Laws

The Energy and Telecommunications Interim Committee is asking utilities, regulators, local governments, and excavators to continue reviewing Montana's one-call laws -- often referred to as the "call before you dig" program -- and report back in January 2012.

The ETIC met Sept. 16 and heard from stakeholders concerning the effectiveness of Montana's underground facility damage prevention program. Federal officials are urging states to strengthen their one-call programs, paying particular attention to natural gas and hazardous liquid pipelines. With passage of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, the federal government was authorized to establish a process for potentially taking enforcement action against states that have laws that don't comply with federal standards. Federal officials have indicated that Montana law is insufficient and have provided the state with feedback on the improvements needed to make its law more effective.

Although the PIPES Act affects natural gas and hazardous liquids pipelines, other underground utility owners are interested in proposals to revise one-call laws. Stakeholders have discussed the possibility of changing Montana's one-call law only for enforcement for pipelines, rather than changing the entire one-call law. For example, a change in the current law to create an enforcement program for liquid and natural gas pipelines that would not include other underground utilities has been discussed.

Committee members asked stakeholders to work on a consensus proposal to improve Montana's law and present the proposal to the ETIC for consideration.

ONEOK Partners reported on the Bakken Pipeline project. The Bakken Pipeline is a proposed 525-mile natural gas liquids pipeline that would transport raw, unfractionated NGLs from the Bakken south to the Overland Pass Pipeline. The pipeline would originate near Sidney, go through eastern Montana and Wyoming into northern Colorado, and connect with the Overland Pass Pipeline.

The Montana Board of Oil and Gas Conservation has developed rules requiring disclosure of chemicals used in hydraulic fracturing, or fracking, a process used in deep-well oil and gas drilling.

The Northwest Power and Conservation Council, the Department of Environmental Quality, and the Public Service Commission also provided updates on their work.

The ETIC's next meeting is Nov. 17 in Helena. Information about the ETIC is available at: <http://leg.mt.gov/etic>. For more information contact Sonja Nowakowski, committee staff, at snowakowski@mt.gov or 406-444-3078.

EQC Studies Parks, Recreation, & Heritage Programs

The management of Montana's state parks, outdoor recreation, and heritage resource programs is shaping up to be a big piece of the Environmental Quality Council's work this interim. House Joint Resolution 32, assigned to the EQC, asks for a comprehensive review of the programs and, among other things, recommendations for improving and making their management a greater priority for the state.

At the committee's Sept. 14-15 meeting, staff provided a summary of the existing state park, outdoor recreation, and heritage resource programs in the state, as well as a summary of past legislative reports and audits related to those programs. Both are available on the EQC's website at leg.mt.gov/eqc.

Information and recommendations from past legislative reports and audits will serve as the foundation for the EQC's study this interim. Highlighted themes from past reports and audits include:

- the value of cultural and heritage tourism to Montanans and the state economy and placing more emphasis on those types of tourism opportunities;
- improving coordination with tourism and travel promotions for all of the programs being evaluated as part of HJR 32;

- recognizing and meeting short- and long-term maintenance needs given limited resources;
- partnering with non-governmental entities to stretch resources;
- restructuring and/or consolidating programs for greater efficiency and sharing of resources; and
- redefining the vision or scope of mission of state-operated historic sites at Virginia and Nevada cities.

The HJR 32 study grew primarily out of discussions about the solvency and management of Montana's state parks system and historic sites at Virginia and Nevada cities. House Bill 628 (2011) sought to consolidate their administration under the Department of Commerce with oversight by a citizen board. HB 628 did not pass, but it provoked discussion about improved management and coordination of these programs.

The discussion of combining Virginia and Nevada cities with the Parks Division at FWP caught some people off guard last session. But past legislative reports and audits show the idea is actually a decade old.

In 2002, legislative auditors analyzed alternative management options for the Montana Heritage Commission, which operates the state-owned sites in Virginia and Nevada cities. At that time, the Heritage Commission was attached to the Historical Society, which created conflicting authorities between the commission and the Historical Society's board of trustees. Legislative auditors recommended that the Legislature transfer management of the site at the two cities to the Parks Division at the Department of Fish, Wildlife, and Parks. Instead, the Legislature moved the Heritage Commission to the Department of Commerce in an effort to tie it more closely with economic development and tourism programs at that agency.

The EQC noted that the outcome of the HJR 32 study is not predisposed to restructuring or consolidating any of the programs under consideration. However, the EQC asked staff and agency administrators to discuss the pros and cons of doing so at a future meeting.

In January, the EQC is slated to receive information about how similar programs are structured and administered in other Rocky Mountain states. EQC members also asked for additional information on how Montana and other states are promoting their state parks and heritage resources and how they're maximizing the use of those resources. The EQC is also interested in whether agencies have strategic plans in place for the management of these programs and whether the programs have defined missions.

Although not on the September agenda, the EQC discussed the impending draft environmental assessment (EA) for the

relocation of wild bison within Montana. The Department of Fish, Wildlife, and Parks released the EA shortly after the EQC adjourned. Council members requested copies of the EA.

For more information about the EQC, please contact Joe Kolman, legislative environmental analyst, at 406-444-9280 or jkolman@mt.gov or Hope Stockwell at 406- 444-1640 or hstockwell@mt.gov.

Law & Justice Committee Evaluates Restorative Justice, Other Matters

Restorative justice, jail suicide prevention, and standards for emergency detention and involuntary commitment of persons with mental disorders were examined by the Law and Justice Interim Committee at its Sept. 9 meeting in Helena.

Restorative Justice

A panel of speakers discussed Gallatin County's justice councils. The councils are part of a restorative justice program where community volunteers interview offenders and develop reparation agreements so that offenders can take responsibility for and repair the harm they have done, thus earning back the trust of the community.

Judge Michele Snowberger, a Belgrade city court judge, who sometimes refers offenders to the program, told the committee that courts are pretty good at sentencing offenders, but not so good at effecting behavioral change. She said that there are a group of people, between those she may never see again and those who need higher-end correctional services, who are engaging in harmful behavior, but who genuinely want to turn their lives around. She said it is this group of offenders who benefit from the justice council program.

The committee also heard from a panel of speakers about the Department of Corrections' restorative justice programs, primarily the volunteer victim impact panels that have been incorporated into the Department of Corrections' boot camp curriculum.

Dan Burden, former superintendent of the boot camp program and currently a volunteer for victim-offender dialogue, told the committee that, based on his interviews with offenders who graduated from the boot camp, the empathy they learned to have for victims through the victim impact panels not only had the most impact on the offenders, but was also the most difficult thing for them to experience as they took responsibility for the real harm they had caused.

Jail Suicide Prevention

A panel representing sheriffs and peace officers, counties, and the Department of Public Health and Human Services, discussed efforts to prevent jail suicides. The sheriffs and peace

officers have been working on a peer review program to help detention facilities assess their own programs.

The Montana Association of Counties offers liability insurance to some counties and is considering whether to provide a premium discount for counties who have standards and training for suicide prevention.

DPHHS has been working to secure grant funding to assist smaller jails with some of the costs associated with crisis intervention and suicide prevention training. Karl Rosston, the state suicide prevention coordinator, reported that there were 23 suicides in federal, state, and local facilities between 2003 and 2010, that 17 of these occurred in county facilities, and that all were accomplished by hanging. He recommended that:

- all correctional facilities have written policies and provide training;
- staff needs to be trained on recognizing and responding to changes in an inmate's mental condition;
- inmates assessed as a risk should be monitored at least every 15 minutes if not every 5 minutes;
- information about an inmate's risk status should be shared between facilities in a timely manner;
- if an inmate thought to be at risk of suicide requires isolation, those cells should at least be made suicide resistant;
- staff should receive annual CPR training; and
- basic first-aid and safety equipment should be available and used when necessary, including suicide resistant clothing and bedding.

Emergency Detention and Involuntary Commitment Standards

Representatives from NAMI-Montana, Disability Rights Montana, the Montana State Hospital, community mental health centers, and county governments discussed the differences between emergency detention and involuntary commitment standards.

Section 53-21-129, MCA, allows law enforcement to detain a person who seems to be in "imminent danger of death or bodily harm to the person or to others". The standard for involuntary commitment under section 53-21-126, MCA, is lower, requiring only a finding that the person is "substantially" unable to provide for the person's "own basic needs of food, clothing, shelter, health, or safety". It is harder for a person to be taken into custody for emergency treatment and stabilization than it is to be involuntarily committed to the state hospital.

Mental health advocates agreed that clarification of current law would help ensure that a person in need of emergency treatment can be treated in a timely manner. The committee also discussed House Bill 365 from the 2011 session, which would have dealt with this issue. The bill died in the House Appropriations Committee.

Other Business

Public comment focused primarily on concerns about the welfare of inmates at the private prison in Shelby, the non-release of inmates eligible for parole, and the murder of an inmate at the Montana State Prison in Deer Lodge.

After agreeing to add a briefing from the Department of Corrections about the Shelby prison, the murder of an MSP inmate, and the Department of Justice's MERLIN system, the committee adopted a work plan for the interim. Several legislators indicated they would request a legislative audit of the private prison in Shelby.

The committee will meet Dec. 15-16. The agenda will include items on restorative justice, jail suicide prevention, emergency detention and involuntary commitment standards, the Shelby prison, the murder of an MSP inmate, and a briefing on MERLIN. As required by HB 142, the committee will also begin to review the statutory advisory councils under its jurisdiction and statutorily-required reports to the committee.

For more information about the committee, visit www.leg.mt.gov/ljic or contact Sheri Scurr at (406) 444-3596.

Legislative Audit Committee to Meet in November

The Legislative Audit Committee will meet Nov. 3-4 in Room 172 of the state Capitol in Helena to review recent audits of state programs and services. The Legislative Audit Division anticipates reports on these topics:

Financial compliance audits:

- Department of Agriculture
- Department of Fish, Wildlife and Parks
- Department of Labor and Industry
- Department of Public Health and Human Services
- Department of Transportation
- Montana Arts Council
- Montana State University Financial-Related
- Office of Public Instruction
- Office of Commissioner of Higher Education
- University of Montana Financial-Related

Performance audits:

- Big Sky on the Big Screen Act: Montana's Film Incentive Program
- Board of Oil and Gas Conservation Regulatory Program
- Child Care Licensing Program
- Controls Over Dyed Diesel Use in Montana

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance and cost of government policies, programs and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies or their programs, including the university system.

For more information, call the division at 406-444-3122 or visit leg.mt.gov/audit. To report improper acts committed by state agencies, departments, or employees, call the division fraud hotline at 800-222-4446 or 444-4446 (in Helena).

Legislative Council Works on Strategic Planning

The Legislative Council conducted a strategic planning session Sept. 15-16. There were four major areas of interest: legislative process, interim committee process, legislative support, and legislative staff. Council members and staff discussed ways to improve the legislative process and support of the legislative branch. Some of the main topics that were discussed included:

- legislator training, including asking former leaders to discuss the challenges of legislative leadership in a term-limited world; other training topics included available technology, bill drafting, the legislative calendar, and the role of interim committees;
- the size of session committees, committee assignments;
- reallocating the budgets to provide each caucus responsibility and flexibility for session and constituent support costs, legislator support costs including technology;
- how to provide more information and potential changes to the legislative calendar to assist legislators in the process;
- considerations for bill drafting, including legislator training, rules, the timing and importance of getting information to drafters as early as possible so that the Legislature can deliberate the important issues early in the process;
- potential tools and training for legislators to understand staff processes in bill drafting and options to provide more and consistent information to legislators;

- revenue estimating process to ensure that both chambers have responsibility;
- interim committee training on roles; looking at size and composition and oversight responsibilities;
- options for a few permanent House and Senate staff to assist leaders and be a greater presence in the interim and to provide greater continuity from session to session;
- legislative security, including the legislative security officer position created last session.

The council agreed that implementing proposals that could garner political consensus and strengthen the Legislature was the optimum goal. The planning session also provided the opportunity for members to get to know each other and staff better in an informal setting.

Two reports, "Ideas for Strategic Planning" and "Back-grounder", that council members used for discussing strategic planning are on the council's website. A detailed report on the strategic planning session and the resulting work plan will be available soon. Previous strategic planning sessions resulted in many of the legislator training opportunities, the creation of the legislative information officer position, continual improvement of legislative rules, the legislator technology allowance, and the expansion of TVMT.

For more information and to access agendas, minutes, and meeting materials, please visit the Legislative Council's website leg.mt.gov/legcouncil, or contact Susan Byorth Fox at (406) 444-3066 or sfox@mt.gov.

Finance Committee Examines State Financial Issues

The September meeting of the Legislative Finance Committee provided the opportunity for members to receive updates on a variety of financial issues facing state government. All reports to the committee can be found at <http://www.leg.mt.gov/css/fiscal/reports/2011-2012-interim-reports.asp>

Financial Perspectives on Pension Funding

The typical pension system is funded from three sources: employee contributions, employer and state contributions, and investment earnings. About 60% of the total funding comes from investment income, with the remainder coming from employees, employers, and the state.

This report provided an introduction to the employer contribution pension funding model and the underlying policy choices of the Legislature. It describes:

- the data and its sources;

- the mechanics of how the model combines the data and assumptions to produce future cost estimates and determines employer contributions and liability for all entities in the retirement system; and
- the state's role in contributing to the retirement systems of local employees.

Future reports will expand on this data to provide the Legislature with options to address the funding issues within the system.

Information Technology

The LFC has the statutory responsibility (5-15-205, MCA) to monitor information technology policies of the Department of Administration, identify IT issues likely to require legislative attention, and evaluate proposed IT changes with respect to fiscal impacts. Statute also allows the LFC to analyze and propose ideas to use IT to benefit the state.

In order to fulfill this role and meet the changing times with IT, the committee evaluated the current CIO reporting format against opportunities for improvement. Future reporting will be designed to deliver useful information regarding IT issues without industry-specific jargon and acronyms, allowing for greater discussion of the IT issues facing the state.

This report is the beginning of a series of reports that will examine how IT is used, budgeted, and planned for within state government.

K-12 Funding

The statutorily required decennial study of the K-12 funding formula will be required during the 2015 biennium. The members of the LFC decided to include on the work plan a series of educational presentations that discuss the history of the school funding law suits and the legislative responses. This series will also include information on how state funding and local property taxes work together to fund K-12 education, how quality education is defined, and what issues the Legislature may face in the 2013 legislative session regarding school funding.

Performance Measurement

Senate Joint Resolution 26 is a resolution that was intended to make a formal statement by the Legislature in support of the performance measurement project. It was also intended to make a legislative record of the recommendations of the various joint appropriations subcommittees on those issues identified during the budgeting process as important to follow and/or receive reports on during the interim, and to provide a more formal way for interim committees to receive an introduction to and potentially undertake performance measurement in the context of their own work. This report was designed to establish the parameters of the project for the

rest of the biennium. Future meetings of the LFC will focus on specific performance measurement activities designed to analyze program effectiveness in relation to statewide goals.

State General Fund Status

The general fund status update was presented to the Revenue and Transportation Interim Committee and the LFC. The purpose of the report was to provide an update to the general fund balance based upon FY 2011 final data, aggregate information on revenue estimates, disbursements, and reversions. The preliminary general fund account unreserved, undesignated balance for FY 2011 was \$343.8 million or \$116.4 million above the level anticipated by the 62nd Legislature. Revenue receipts for FY 2011 came in \$75.9 million over the amount estimated in House Joint Resolution 2, and unanticipated reversions attributed \$46.4 million. Given the outcome of FY 2011, the anticipated general fund ending fund balance is \$303.61 million for FY 2012 and \$265.08 million for FY 2013.

Select Committee on Efficiency in Government

The Select Committee on Efficiency in Government held its first meeting of the interim at the Flathead Valley Community College in Kalispell August 21-22. The committee was created by House Bill 642 from the 2011 Session. There are 12 members on the committee: six members each from the House and Senate, evenly split between the two political parties. The committee is charged with assessing the efficiency and effectiveness of state government activities in four areas: priority budgeting; health care; technology; and natural resources.

Dr. Jane Karas, FVCC president, welcomed the committee to Kalispell and FVCC. Kalispell Mayor Tammi Fisher and Kalispell City Manager Jane Howington described the challenges cities and towns face on the matters of economic development and highlighted the importance of decision-making among federal, state, and local officials.

Sen. Jon Sonju, chair of the committee, moderated a panel on information technology, and Sen. Mary Caferro moderated a panel on health care, dealing primarily with Medicaid.

Members of the technology panel included Dick Clark, the state's chief information officer; Shawn Beqaj, VP, Government Affairs, and Phil Rosnick, both of Cablevision (formerly Bresnan Communications); Darren Knipp, Chief Technology Officer, VP Products & Solutions, Perceptive Software; and Robert N. Campbell III, U.S. State Government leader, Deloitte, LLP.

Clark provided an overview of the state's information technology infrastructure, capacity, and planning and oversight.

Other members of the panel discussed the nature and scope of changes occurring in information technology, ranging from hardware (including smart phones, tablets, etc.) to software, social media, mobile computing, cloud computing, and public-private partnerships. Clark summarized the panelists' comments, insights, and suggestions and offered his services to the committee on a continuing basis.

Members of the health care panel included Bob Olsen, MHA, an association of Montana healthcare providers; John Goodnow, CEO, Benefis Health System, Great Falls; Lander Cooney, CEO, Community Health Partners, Livingston; Sheila Smith, Director, Stillwater Therapeutic Services, Kalispell; and Cindy Romesha and Megan Duffy, both Medicaid beneficiaries.

Olsen discussed recent trends in Medicaid service delivery in Montana, through both hospitals and other providers. Cooney described the services provided by and the experience of Community Health Partners as an integrator of health services and health information. Smith summarized the decade-long decline in state financing of mental health services and described the attendant pressure felt by mental health service providers who are frequently major providers of the remaining mental health services under Medicaid.

Romesha and Duffy each described their respective temporary participation in the Medicaid program and the benefits received and challenges faced. Goodnow outlined the potential challenges and advantages of a "medical home" model for providing health care services, including Medicaid.

The committee elected Rep. Galen Hollenbaugh as vice chair of the committee. The committee agreed to require a 2/3 majority vote to advance a committee recommendation for legislation. The committee established a health care/Medicaid subcommittee. Members of the committee are Rep. Pat Noonan, chair, Rep. Mark Blasdel, Caferro, and Sen. Edward Walker.

The committee will meet Thursday and Friday, Oct. 6-7, in Room 102 of the state Capitol.

More information can be found at the committee's webpage at www.leg.mt.gov/sceg. Or contact Dave Bohyer, lead staff, at dbohyer@mt.gov or 406-444-3592.

State Administration & Veterans' Affairs Committee Meets in October

The State Administration and Veterans' Affairs Interim Committee will meet Oct. 20 in Room 137 of the state Capitol. The meeting time has yet to be determined. The agenda and meeting material will be posted to the committees's website when available. Look for a summary of the meeting in the November newsletter.

For more information, contact Megan Moore at 406-444-4496 or memoore@mt.gov. Committee information is available at leg.mt.gov/sava.

Water Panel Continues Study of Exempt Wells

The Water Policy Interim Committee wants to hear proposals regarding exempt water wells, members said at the September meeting.

The committee is studying wells that pump less than 35 gallons per minute and yield less than 10 acre-feet of water a year. Thousands of these wells exist around the state for various uses including domestic, stock, and irrigation.

However, some argue that the cumulative effect of exempt withdrawals may be impairing senior water rights.

Montana and other western states manage water on a first come, first served basis. New uses are allowed so long as prior uses are not adversely affected. Larger wells and surface water appropriations must obtain a permit from the state and show that existing water users would not be harmed by the new use.

The committee heard that many other western states also struggle with exempt wells. Nathan Bracken, an attorney with the Western States Water Council, said there are hammer approaches, such as eliminating any exemptions, and scalpel approaches, such as targeted efforts in specific watersheds. Bracken's report on exempt wells is available at: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Water-Policy/Meeting-Documents/September-2011/exempt-well-issues-west.pdf>

The committee also learned that while exempt wells have a priority date the same as other water rights, enforcing senior rights against any junior ground water rights may be difficult. WPIC attorney Helen Thigpen said that calls are potentially even more challenging in the context of exempt wells, given that many exempt wells are used for domestic purposes and do not go through the normal permitting process in which legal availability and impacts on senior users are determined.

The committee will continue its discussion of exempt well issues at a Jan. 10 meeting in Helena.

For more information visit www.leg.mt.gov/water or contact Joe Kolman, committee staff, at 406-444-9280 or jkolman@mt.gov.

The Back Page

Is Our Vision of Criminal Justice 20/20?

By Sheri Scurr
Research Analyst
Legislative Services Division

I'll be honest. When I read the first WHEREAS clause of the Senate Joint Resolution 29 study assigned to the Law and Justice Interim Committee, I rolled my eyes and thought sarcastically: "Well this is going to be an exciting interim." The clause reads: "WHEREAS, restorative justice is a criminal justice model that focuses on repairing the harm to all parties affected by a crime and holding offenders accountable, rather than on retribution against and punishment of the offender". This sounded a touchy-feely, can't we just get along, pie-in-the-sky vision of criminal justice for my sensibilities. But, the more I explored restorative justice, the more I appreciated it as a new way of looking at criminal justice.

Are We too Focused on Retribution?

The problem, according to restorative justice advocates, is that our current justice system doesn't see straight. Court proceedings that involve only prosecutors and defense attorneys arguing about whether a particular law was broken is short-sighted, they say. Victims are relegated to the sidelines, and offenders who successfully argue they are not responsible or accountable for the crime are rewarded. When it comes to sentencing, judges may impose an impersonal, state-defined punishment that fails to provide the victim with any sense of real justice and offers the offender no path to redemption and acceptance back into the community.

Just how good is our vision of the criminal justice system? Relying on data collected by the International Centre for Prison Studies in London, *The New York Times* reported that the U.S. prison population dwarfs that of other nations and that this is a "reflection of a relatively recent and now entirely distinctive American approach to crime and punishment."

With an incarceration rate of 751 people in prison or jail for every 100,000 in population, about one of every 100 adults in America is locked up.¹

There is something wrong with this picture, I thought. I dug a bit deeper to get a clearer picture. I found that, according to the U.S. Bureau of Justice Statistics (BJS), in 2009 about 2.3 million adults were in jail or prison and more than 5 million adults were on probation or parole. That amounted to a total adult correctional population in the U.S. in 2009 of more than 7.2 million. In a country of about 300 million, that is 1 in every 42 adults.² This is startling.

Recidivism is also a major problem. There are various ways to measure recidivism, but looking at re-arrest rates following parole, a study of prisoners released in 1994 showed that 67.5% of the prisoners were rearrested within 3 years for a new offense, primarily felonies and serious misdemeanors.³ To me this showed an utter failure to reform and rehabilitate.

The consequences to communities and taxpayers is showing up in higher unemployment rates, broken families, and higher costs for taxpayers. A U.S. Department of Justice issue paper in 2000 noted that: "Recycling parolees in and out of families and communities . . . is detrimental to community cohesion, employment prospects and economic well-being, participation in the democratic process, family stability and childhood development, and mental and physical health."⁴ A BJS report also noted that in 2007, correctional costs accounted for 32% of all government expenditures.⁵

How do Americans feel about their justice system? According to 2001 Gallup poll, only 23% of those surveyed had confidence in the U.S. criminal justice system when compared to 17 other public institutions.⁶ Again, further evidence that a criminal justice vision based on retribution and punishment without attention to rehabilitation and restoration is failing.

¹ Adam Liptak, "U.S. prison population dwarfs that of other nations", *The New York Times*, April 23, 2008.

² U.S. Department of Justice, "Probation and Parole in the United States, 2009", Bureau of Justice Statistics Bulletin, NCJ 2316774, December 2010.

³ U.S. Department of Justice, "Recidivism of Prisoners Released in 1994", Bureau of Justice Statistics Special Report, NCJ 193427, June 2002.

⁴ Joan Petersilia, "When Prisoners Return to the Community: Political, Economic, and Social Consequences", Sentencing & Corrections: Issues for the 21st Century, Papers from the Executive Sessions on Sentencing and Corrections, No. 9, U.S. Department of Justice, November 2000.

⁵ U.S. Department of Justice, BJS Corrections Expenditures, Key Facts at a Glance, <http://bjs.ojp.usdoj.gov/content/glance/exptyp.cfm>

⁶ Lawrence W. Sherman, "Trust and Confidence in Criminal Justice", University of Pennsylvania, July 2001.

Montana Statistics

How does Montana stack up? According to the Montana Department of Corrections, Montana's incarceration rate is 370 per 100,000 residents, which is below the national average. The department's 2011 biennial report states that Montana's overall recidivism rate is 37.6%, with 9% of released prisoners returned to prison because of new crimes. About 50% of all returns were within the first year of release. According to an Association of State Correctional Administrators report, which is cited in the department's report, Montana's recidivism rate places the state in the middle of the pack when compared to other states.

What is the cost to Montana taxpayers? The Department of Correction's budget is about 9% of the state budget. Of the Montana Department of Corrections' total expenditures in FY 2010, about \$73 million, or 44% of the department's total expenditures, was for secure custody facilities. About 2,600 offenders out of a total correctional population of about 13,000 offenders are incarcerated in secure facilities. It costs the state about \$90 a day to incarcerate a person in the Montana State Prison, while supervision on probation or parole costs about \$5 to \$8 a day.⁷

Looking Through Restorative Justice Lenses

Restorative justice advocates think it is time to offer a new prescription for the criminal justice system -- a different pair of glasses that will help us see crime as an offense against individuals and communities and not simply as a violation of a law. These restorative justice lenses would also help us see that reformation of offenders and restoration to the community depends on offenders taking responsibility for their actions, being accountable to victims and communities, and doing whatever it takes to restore the harm done and earn back the trust of the community. According to Howard Zehr, widely recognized as a pioneer of restorative justice principles, our current vision compared with vision through restorative justice lenses would be something like the table below:

Current Criminal Justice System	Restorative Justice Lenses
Crime is a violation of the law and the state.	Crime is a violation of people and relationships.
Violations create guilt.	Violations create obligations.
Justice requires the state to determine blame (guilt) and impose pain (punishment).	Justice involves victims, offenders, and community members in an effort to put things right.
Central focus: <i>offenders getting what they deserve.</i>	Central focus: <i>victim needs and offender responsibility for repairing harm.</i> ⁸

Restorative justice, then, is not a particular program or process, it is a lens through which law enforcement, prosecutors, and judges see the needs of crime victims and the responsibilities of offenders.

Even as I reached this understanding of restorative justice, I was still thinking: "Okay, this sounds all well and good, but how is restorative justice supposed to be accomplished? By whom? With what resources?"

Restorative Justice Programs

According to articles available online at www.restorativejustice.org, there are more than 300 restorative justice programs operating in the United States. These programs may be:

- community-based;
- church or faith-based;
- system-based (e.g., operated by correctional institutions, courts, or law enforcement).

Restorative justice programs fall into two broad categories:

- diversionary; or
- non-diversionary.

Diversionary programs divert offenders from the traditional justice system processes at various stages (i.e., pre-charge, pre-sentencing, or post-sentencing). Non-diversionary programs incorporate restorative values within the framework of existing processes, such as during sentencing, as part of developing a restitution plan, or as part of the programming inmates must complete before being eligible for parole.

How Are Restorative Justice Programs Funded?

Although most of the programs rely heavily on community volunteers, funding is needed for training and coordination. System-based programs usually receive some federal, state, or local government funding. Faith-based programs receive

⁷Montana Department of Corrections, "The Montana Department of Corrections: At-a-Glance: 2009-10". See also, Montana Department of Corrections, "2011 Biennial Report".

⁸Mark Umbreit, Betty Vos, Robert Coats, Elizabeth Lightfoot, "Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls", *Marquette Law Review*, Issue 89:251, 2005.

charitable contributions of time and resources. Some community-based non-profit organizations receive funding from private foundations.

Who Refers Cases to Restorative Justice Programs?

Judges, probation officers, prosecutors, schools, and law enforcement officers may refer offenders to restorative justice programs. However, when and how referrals are made depends on the program and varies widely.

What Cases May Be Handled in a Restorative Justice Process?

Adults or juveniles may be referred to restorative justice programs for crimes involving anything from misdemeanor disorderly conduct or shoplifting, to serious felony offenses such as sexual assault or homicide. Nationally, about two-thirds of the cases referred to restorative justice programs involve misdemeanors, while one-third involve felonies. Vandalism, minor assaults, theft, and burglary are the four most common types of cases referred. However, more and more programs are finding success with more serious offenses, including violent crimes.

What Has Montana Done?

In 2001, the Montana Legislature passed House Bill 637, which created an Office of Restorative Justice within the Department of Justice. The legislation (codified as 2-15-2012 through 2-15-2014, MCA) articulated the following philosophy about restorative justice:

2-15-2012. Intent. The legislature recognizes that incarcerating offenders carries an extremely high cost and may not be the most effective strategy for restoring victims, reforming offenders, and reducing recidivism. It is the intent of 2-15-2013 to divert appropriate offenders who are at low risk for violence from incarceration to community programs based on restorative justice and to divert funds from the department of corrections to the department of justice to support an office of restorative justice and to support community programs based on restorative justice.”

Section 2-15-2013(3)(c), MCA, provides that restorative justice programs to be promoted by the Department of Justice’s Office of Restorative Justice “include but are not limited to victim-offender meetings, family group conferencing, sentencing circles, use of victim and community impact statements, restitution programs, constructive community service, victim awareness education, victim empathy programs, school expulsion alternatives, peer mediation, diversion programs, and community panels.”

With the vision of restorative justice (restore victims, reform offenders, reduce recidivism) already in statute, what has been done? The Office of Restorative Justice was initially funded

by three one-year \$30,000 federal grants offered through the Montana Board of Crime Control. These grants allowed for one full-time restorative justice coordinator and also allowed the office to fund annual training events and provide technical assistance to various public and private entities interested in incorporating restorative justice into their programming. However, when the grants expired in 2003, no further funding was provided. Today, the Office of Restorative Justice is inactive.

The Department of Corrections, however, has embraced restorative justice. Even though there is no statutory mandate and very limited funding, the department has made restorative justice part of its victim services office. As a result, the following programs are operating for some offenders who are inmates within the department’s secure correctional facilities:

- A victim of an offender supervised by the department may request a face-to-face dialogue with the offender (if the offender agrees). The dialogue is coordinated through the victim services coordinator and offered with the assistance of trained volunteers.
- The Treasure State Correctional Training Center (i.e., boot camp) hosts victim impact panels where two to four volunteers who have been victims of crime speak to offenders to help them understand the harm caused by crime. Offenders learn to take responsibility for the personal harm they caused rather than see their crimes as simply breaking the law.
- Offenders incarcerated or supervised by the department are offered the option of writing letters to victims to express their remorse and take responsibility for their actions. Victims have the option of reading these letters, which are filed with the department.
- The department collects court-ordered restitution and distributes it to victims.
- Finally, the department ensures that any community service ordered by the court is fulfilled before an offender is released from probation or parole.

Assisted by the Montana Office of Restorative Justice when it had federal funding, Gallatin County received a grant to establish justice councils. Currently, the program consists of three justice councils, each consisting of four to six trained community volunteers. Participants in the program may be referred to the program either as part of a pre-trial diversion agreement or as a post-conviction sentencing enhancement. The county’s misdemeanor probation office may also refer offenders to the program. The offender appears before the justice council, which reviews the offender’s case and works with the offender (and sometimes with the victim) to develop a reparation agreement. Under the agreement, the offender

agrees to do certain things to repair the harm caused to the community or the victim, to reform the offender's behavior, and to earn back the community's trust.

Other communities in Montana have restorative justice programs, though most are for juvenile offenders.

Is This a Set of Rose-Colored Glasses?

Restorative justice is not without its skeptics. Questions about due process, funding, and lines of legal authority remain to be answered. However, the personal testimonies of those who have participated in restorative justice programs in Montana and nationwide as victims, offenders, community volunteers, law enforcement officers, and judges so far has been compelling. As the interim progresses, the Law and Justice Interim Committee will be learning more about restorative justice, assessing the effectiveness of programs, and considering what, if any, recommendations to make to the next Legislature about whether restorative justice can improve the state's criminal justice system.

Those interested in this issue may stay informed about the committee's activities by visiting www.leg.mt.gov/ljic or contacting Legislative Services Division staff at 406-444-3064.

Calendar of Legislative Events

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

October						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5 Economic Affairs, Rm. 137, 9 a.m.	6 Economic Affairs, Rm. 137, 8:30 a.m. Select Committee on Efficiency in Govern- ment Subcommittee on Medicaid, Rm. 102, 9 a.m. Select Committee on Efficiency in Govern- ment, Rm. 102, 1 p.m.	7 Select Committee on Efficiency in Govern- ment, Rm. 102, 8:30 a.m.	8
9	10	11	12	13	14	15
16	17	18	19	20 State Administration & Veterans' Affairs, Rm. 137, time TBA	21	22
23	24	25	26	27	28	29
30	31					

November						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3 Legislative Audit Committee, Rm. 172, time TBA	4 Legislative Audit Committee, Rm. 172, time TBA	5
6	7	8	9	10	11	12
13	14 Children, Families, Health & Human Services, Rm. 137, time TBA	15	16	17 Education & Local Government, Rm. 102, time TBA Energy & Telecom- munications, Rm. 172, time TBA	18 Education & Local Government, Rm. 102, time TBA	19
20	21	22	23	24 Thanksgiving Day	25	26
27	28	29	30			

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